FILE COPY

FIL
OCT 10

Supreme Court of the United States

OCTOBER TERM, 1935

No. 8

JAMES C. COLGATE,
Appellant,

vs.

ERWIN M. HARVEY, Tax Commissioner of the State of Vermont,
Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF VERMONT

APPELLEE'S BRIEF

LAWRENCE C. JONES,
Attorney General.

GUY M. PAGE,
SEYMOUR P. EDGERTON,
of Counsel.

Supreme Court of the United States

OCTOBER TERM, 1935

No. 8*

JAMES C. COLGATE,

Appellant,

vs.

ERWIN M. HARVEY, Tax Commissioner of the State of Vermont,

Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF VERMONT

APPELLEE'S BRIEF

*Briefed by Appellant as October Term, 1934, No. 790.

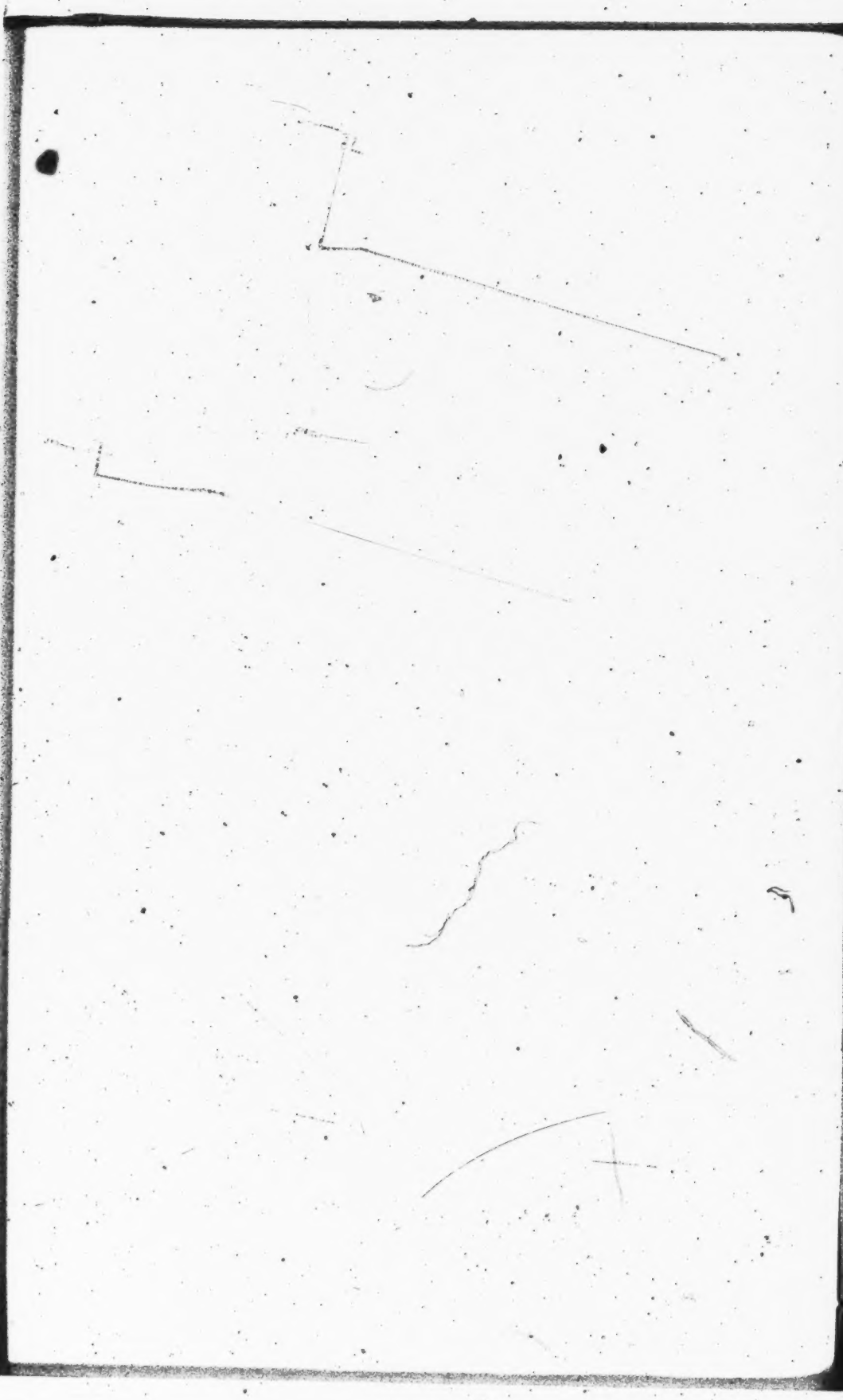

TABLE OF CONTENTS

SUMMARY OF ARGUMENT..... 1

APPELLANT'S POINT I. (Claim of unequal laws)..... 5

The question is one of classification to avoid double taxation, under principles frequently approved by this Court..... 5

The exemptions are admittedly logical..... 10

The decisions cited by appellant are not apposite because this classification is not of taxpayers but of property, and admittedly is not capricious..... 10

Exemption of income from credits bearing not over 5% interest, arising from investments within Vermont..... 14

The history of the exemption statute indicates its purpose to avoid double taxation..... 14

Its effect is to impose a single tax on a single economic interest and divide its burden between debtor and creditor, thus removing a barrier to, and encouraging investment in Vermont..... 18

In its operation the exemption closely corresponds to a "general usage" among the states..... 19

A purpose to encourage investment in Vermont by avoiding double taxation is within recognized principles of legislative power..... 21

The record fails to show any effect of the nature claimed by appellant..... 23

Exemption of income from corporate dividends, proportioned to the taxation imposed upon the corporation by Vermont..... 24

The right to exempt not disputed but the claim is disproportion between the exemption and the corporate franchise tax . 24
The corporate tax upon which the exemption is conditioned involves both franchise taxes and property taxes, and the claimed disproportion does not exist..... 25
APPELLANT'S POINT II. (Claim of Burden on Interstate Commerce)..... 26
The restraining effect upon exportation of capital, claimed by appellant, could arise, if at all, only as an incident of fair and equal tax laws. 27
By established rules acquisition of securities or credits is not interstate commerce..... 28
The record fails to show that appellant is taxed for transactions not local in character; and he is taxed only on net income..... 29
APPELLANT'S POINT III. (Relief available to Appellant)..... 30
Invalidity of the challenged exemptions should not entitle appellant to immunity from subsequent reassessment bearing equally upon all similarly situated.. 30
APPELLANT'S POINT IV. (Personal Exemption)..... 31
The provisions for alternative exemptions are not capricious..... 32
Incidental small burden upon appellant does not entitle him to a non statutory exemption..... 33
The record does not show error..... 33
APPELLANT'S CONCLUSION. (Effect upon the Statute of Invalidity of Exemption Clauses)..... 34

In view of the severability clause in the statute, a holding of invalidity as to any exemption clause should not, in this Court, render the entire act invalid..... 34
APPENDIX. (Comparative Legislation: State Decisions)..... 36
States wherein exemption has been given to loans or obligations secured by mortgage of property within the state, sometimes with additional exemptions of credits, etc..... 36
States wherein varying provision is made for exemption of notes, credits, etc. generally, or in some limited form, either to avoid double taxation or to promote development of land..... 40
State Decisions compiled..... 44

SUMMARY OF ARGUMENT

Appellant's Point I.

The claimed discriminations against appellant, a citizen of Vermont, contained in the Vermont income tax law, are solely the result of classification of income for taxation. The act applies to all residents of the State and to no non-residents. The challenged classifications are directed to the exemption of dividends from stock proportionately to the taxation of the corporation by Vermont and to the exemption of credits bearing a rate of interest of not over 5%, created by investments within the State.

The State is not forbidden to classify income for tax purposes, and to exempt income where the same economic interest is otherwise taxed by it. The basis of the classification is admittedly not capricious but "extremely logical" and it is challenged because of its burden upon the right of a citizen of Vermont to invest in other states. None of the cases cited by the appellant sustain his claim. They relate to capricious classification,* or to classifications of taxpayers†, or to provisions not present in the challenged statute§.

As to the exemption of credits, the statutory history shows that it was originally enacted and has been retained to remove a barrier effectively discouraging the investment of Vermont funds in the State, by avoidance of double taxation, dividing the burden of a single tax between the borrower and the lender. Ef-

---

*Louisville Gas & El. Co. v. Coleman, 277 U. S. 32; F. S. Royster Guano Co. v. Virginia, 253 U. S. 412.

† Hanover Fire Ins. Co. v. Harding, 272 U. S. 494; Chalker v. Birmingham & N. W. Ry. Co., 249 U. S. 522; Bethlehem Motors Corp. v. Flynt, 256 U. S. 421.

§ Klein v. Board of Supervisors, 282 U. S. 19.

forts of the State to avoid double taxation by offsetting debits against credits or other personal property began as early as 1797 and were increasingly extended down to 1912. In that year the deduction of debts from the personal property listed to a taxpayer was abolished and by the same act provision made exempting credits from the general property tax, if the rate of interest did not exceed 5%. An amendment at the next session permitted the taxpayer to deduct from his property list a limited amount of credits which were taxed by the State because bearing interest at 6%. The result was to give to a debtor taxpayer either a tax exemption or an interest credit on account of his debt, exempting the creditor who reduced his interest and taxing the creditor whose credit was deducted from the debtor's tax list because the creditor exacted the legal rate of interest. The system thus resulted in substantial avoidance of twice taxing the same wealth. When a flat rate on intangibles was substituted for the general property tax upon them and when the income tax was in turn substituted for the tax on intangibles, the exemption of money loaned within the State at 5% was retained in the new system. In practical operation (which is the test) the statute corresponds closely with a "general usage" in many other states. Appellant challenges the alleged purpose of the statute to encourage investment of Vermont funds in Vermont, but such encouragement in view of the evil sought to be remedied, does not involve the exercise of any power prohibited to the states. The record is barren of any evidence of injurious effects with respect to investments in other states.

As to the exemption of income from corporate dividends in proportion to the taxation of the corporation upon its income, appellant's challenge is that the criterion of classification is the liability to a 2% State franchise tax upon foreign and domestic corporations alike, measured by the income attributable to Vermont.

It is appellant's contention that the 2% tax on corporate income by this franchise tax is not commensurate with the exemption from the 4% taxation of dividends received by resident individuals. But the franchise tax is not the measure of the tax burden on account of which income from dividends is proportionately exempted. In practical operation the corporations paying the franchise tax will be found to be taxed upon their property to an extent roughly proportional to the franchise tax and at a local rate exceeding 3% of the capital. When both the franchise tax and the property tax are considered, the tax discrepancy of which appellant complains ceases to exist. And apart from the property tax, in view of the probable variation between corporatee arnings and corporate dividend distributions, the discrepancy is not greater than has been sustained by this Court, as within the power of the states.

Appellant's Point II.

Appellant asserts that the challenged exemptions constitute a regulation of interstate commerce by a practical embargo upon the exportation of capital from Vermont into other states. But the creation of credits and the acquisition of corporate stock is not interstate commerce. The two cases cited by appellant* do not so hold. One is inapposite and in the other, it was left undecided whether the peculiar attributes of a large investment business in other states rendered it interstate commerce. But many decisions of this Court establish the fact that personal contracts, the creation of credits, the purchase of commercial paper, or corporate stock or commodities in one state by the citizen of another, are not interstate commerce, but are local in their character. The possibility that interstate commerce will ensue is insufficient to change the

**Northwestern Mut. Life Ins. Co.* v. *Wisconsin*, 247 U. S. 132, and *New Jersey Telephone Co.* v. *Tax Board*, 280 U. S. 338, 346.

character. Moreover, the record is silent as to whether any interstate transaction occurred with respect to the ownership or the receipt of income by appellant who, though a resident of Vermont, is a stockbroker in New York. The thing taxed is the receipt and enjoyment of income having a Vermont situs.

Appellant's Point III.

The declaration of invalidity of an important part of the State taxing system because of inequality ought not to preclude a reassessment, under appropriate legislation, upon appellant and those unlawfully exempted.

Appellant's Point IV.

The statute provides for two alternative personal exemptions, the larger one to be deducted from business income,—"Class A Income"—the smaller, if there is no Class A Income, to be deducted from income from intangibles,—"Class B Income."

The peculiar situation of appellant was such that he did not claim on his return (because he would not receive) either exemption. The exemption of which he now says he has been unlawfully deprived is a mere subsistence exemption and it is not beyond the power of the State to deny it to a class which has other income. The incidental inequalities are unsubstantial and are not prohibited by the Federal Constitution. Moreover, the record is insufficient to warrant a reversal upon this ground.

Appellant's Conclusion.

The express legislative intention that the invalidity of any portion of the act should not invalidate the rest raises a presumption of intention which, in the instant case, should operate to save all proper provisions in spite of any possible invalidity of the challenged exemptions. This question is ultimately for the State Court.

But the exemptions challenged by appellant violate no right guaranteed to him by the Federal Constitution.

ARGUMENT

APPELLANT'S POINT I.

The Vermont statute here challenged provides for the taxation of residents of Vermont. (Public Laws of Vermont, 1933, Sec. 873.)[1] Appellant is a resident citizen. (*Rec. p.* 8, *fol.* 14.) The statute challenged applies indistinguishably to all residents and to no non-residents. There is therefore involved no discrimination against citizens of other states. There is no discrimination between citizens of Vermont unless it results from the classification of income. The questions raised by appellant under his *Point I* are wholly questions of the validity of classifications, with respect to exemptions. These classifications operate solely to exempt the income from property which has been subjected to the taxing laws of the State with respect to property of that class. The challenged exemptions are thus directed to the avoidance of double or multiple taxation by Vermont of the same economic interest, viz: (a) shares of stock in corporations to the extent to which the issuing corporation is taxed in Vermont, and (b) certain credits, the consideration for which became a part of the general wealth of the State and thereby subject to its tax laws.

---

[1]This section of the revision of the statutes was originally Sec. 3 of Part I of No. 17 of the Acts of 1931, and is so cited by appellant in his brief, (p. 3). Appellee here and elsewhere uses the sections of the revision.

The general power of states to classify for purposes of taxation is not open to question.[2] It applies equally to classification of incomes for taxation. . . In such taxation "possible differences in tax burdens not shown to be substantial or which are based on discriminations not shown to be arbitrary or capricious do not fall within constitutional prohibitions." (*Lawrence* v. *State Tax Commission*, 286 U. S. 276, 284.) "It is not necessary . . . . that the basis of the classification must be deducible from the nature of the things classified . . . . . It is enough, for instance, if the classification is reasonably found in the 'purposes and policy of taxation.'" (*Watson* v. *State Comptroller of New York*, 254 U. S. 122, 125; *Stebbins* v. *Riley*, 268 U. S. 137, 143.)

A basis of classification is reasonable and valid which operates to avoid double taxation by a single state of the same economic interest. (*Lawrence* v. *State Tax Commission, supra; Klein* v. *Board of Supervisors*, 282 U. S. 19, 23; *Kidd* v. *Alabama*, 188 U. S. 730, 732; *Darnell* v. *Indiana*, 226 U. S. 390; *Watson* v. *New York, supra; Clement National Bank* v. *Vermont*, 231 U. S. 120; *Concordia Fire Ins. Co.* v. *Illinois*, 292 U. S. 535.)

The rule has a wide variety of application. Thus a state may tax income of a foreign insurance corporation received in the state during the year and transmit-

---

[2]See *Ohio Oil Co.* v. *Conway*, 281 U. S. 146; *Bell's Gap R. Co.* v. *Pennsylvania*, 134 U. S. 232; *Travellers' Ins. Co.* v. *Connecticut*, 185 U. S. 364; *Merchants &c. Bank* v. *Pennsylvania*, 167 U. S. 461; *Clement National Bank* v. *Vermont*, 231 U. S. 120; *Lawrence* v. *State Tax Com.*, 286 U. S. 276; *Magoun* v. *Illinois T. & S. Bank*, 170 U. S. 283; *Maxwell* v. *Bugbee*, 250 U. S. 525; *Magnano* v. *Hamilton*, 292 U. S. 40; *Watson* v. *State Comptroller*, 254 U. S. 122; *State Board* v. *Jackson*, 283 U. S. 527; *Pacific Am. Fisheries* v. *Alaska*, 269 U. S. 269; *New York* v. *Roberts*, 171 U. S. 658; *Northwestern Mut. Life Ins. Co.* v. *Wisconsin*, 247 U. S. 132.

ted to the state of its domicile, and may omit to so tax similar domestic corporations, if it taxes them annually at the same rate for the sum of their property, which presumably includes the income. (*Concordia Fire Ins. Co.* v. *Illinois*, *supra*, 292 U. S. 535.) It may tax express companies which, due to their method of operation, have no substantial amount of taxable physical property, and may omit to so tax express companies using their own cars and steamboats. (*Pacific Express* v. *Seibert*, 142 U. S. 339.) It may impose upon domestic insurance corporations a large commutation tax, by way of a franchise tax, measured by income from credits largely on account of investments outside the state, although its franchise tax on foreign insurance companies licensed within the state is a small flat fee This classification reflects the right of the state to tax the domestic corporation on account of all property having situs within the state. (*Northwestern Mutual Life* v. *Wisconsin*, 247 U. S. 132). It may (or it could prior to the establishment of the present doctrine of situs) tax non-resident stockholders at a flat uniform rate without deductions, and tax resident stockholders at the local rate, after deducting a proportional part of the corporate real estate taxed within the state. (*Travellers' Ins. Co.* v. *Connecticut* 185 U. S. 364.) It may exempt from taxation depositors in banks which have paid a tax on deposits and tax depositors in banks which have paid no such tax. (*Clement National Bank* v. *Vermont*, *supra*, 231 U. S. 120.) It may tax at a flat rate corporations not subject to a tax at elected domiciles within the state, and exempt corporations which are taxable at their domiciles. (*General American Tank Car Corp.* v. *Day*, 270 U. S. 367.) It may distinguish in its inheritance tax laws between property which was taxed in the owner's life time and that which was not, exempting the one and taxing the other. (*Watson* v. *Comptroller of New York*, *supra*, 254 U. S. 122.) It may tax an individual for the

receipt of income earned outside the state, and exempt a corporation from such a tax, under a policy of avoiding double taxation by exempting the income of the corporation but taxing the dividends to the stockholders. (*Lawrence* v. *State Tax Com.*, *supra*, 286 U. S. 276.)

The right to exempt persons or property from one tax because the same economic interest has been otherwise taxed has been repeatedly applied in cases with respect to the taxation of corporations or the stockholders.

Thus, in *Kidd* v. *Alabama*, *supra*, (188 U. S. 730) a tax to the holder upon shares of stock in foreign railroad corporations not operating in Alabama was challenged because no similar tax was laid on shares of domestic railroads or foreign railroads doing business in the state. This Court, by Mr. Justice Holmes, said (p. 732):

> "We say that the state in taxing stock may take into account the fact that the property and franchises of the corporation are untaxed, whereas in other cases they are taxed; and we say untaxed because they are not taxed by the state in question . . . . If the property is untaxed by its laws, then for the purpose of its laws the property is not taxed at all."

The doctrine of that case was followed by this Court in *Darnell* v. *Indiana*, 226 U. S. 390. There the Indiana statute exempted from taxation shares of stock in domestic corporations to the extent that the corporation was taxed by Indiana for its tangible corporate property, but taxed foreign corporations. The case involved no question with respect to an allowance to a foreign corporation which had property taxed within the State of Indiana, and it was held that the case was governed by *Kidd* v. *Alabama*, and was consistent with

substantial equality notwithstanding the technical differences.

In *Klein* v. *Board of Supervisors*, 282 U. S. 19, the Kentucky statute taxed stock in corporations, exempting shares in corporations which paid taxes in Kentucky upon 75% of their total property. This Court held that while a state may tax both the corporation and its stockholders, it need not do so, for it is just not to tax the stockholders on values that have already borne their share through the taxation of the corporation.

It is the necessary conclusion from these cases that a state may so classify the objects of taxation within its jurisdiction as to avoid taxing the same value more than once and in so doing may disregard the taxation imposed by other states. Under the decisions of this Court, therefore, the State of Vermont may so adjust its income tax law as to reflect the tax burdens otherwise imposed by its laws without lessening its tax burdens because the wealth which it taxes has in some form been subjected to taxation by other states.

Appellant under *Point I* of his Brief attacks the classification in the Vermont income tax law as a discrimination against the privileges of a citizen of the United States because it imposes a greater tax burden upon citizens of the State of Vermont when they invest "in enterprises of sister states" than when they invest in Vermont. The objection is that thereby citizens of Vermont are deprived of the supposed right "to invest in non-Vermont loans and stocks on at least as favorable terms as they are permitted to invest in Vermont loans and stocks." (*Br. p.* 12.)

This objection is directed to a tax classification whereby in effect, the income from certain property once taxed by the state of Vermont is exempted from its income tax, and this exemption does not extend to the income from investments not otherwise taxed by Vermont, viz., shares of stock of corporations, to the extent that the corporations pay no Vermont tax, and credits from

investments outside the state. This, appellant claims, operates as an "embargo" (*Br. p.* 27) upon investments in other states by residents of Vermont. "This is not," he says, (*Br. p.* 15), "the usual case of a classification invalid because capricious and without logical basis. Its basis is extremely logical but wholly vicious and repugnant to the Fourteenth Amendment and to the whole theory of our union of states." But the repeated rulings of this Court cited above are to the contrary. Nor is there anything to support appellant's theory in the cases upon which he relies.

Appellant cites (*Br. p.* 12) *Louisville Gas & Electric Co.* v. *Coleman*, 277 U. S. 32, to the effect that capricious classifications for purposes of taxation are invalid. In the Coleman case no logical ground of distinction was found between the acts taxed and untaxed. Here the logical distinction is admitted by the appellant (*Br. p.* 15) and is established by the many decisions of this Court, cited above, to the effect that for tax purposes there is an obvious distinction between property and rights which have once been taxed by a state, and property and rights which are untaxed, or taxed only by another state.

Appellant relies upon *Hanover Fire Ins. Co.* v. *Harding*, 272 U. S. 494, where a classification was made between foreign insurance companies admitted into the state and domestic insurance companies. The admitted foreign companies were taxed upon the full value of their net receipts as property and the domestic corporations upon only 30% of the full value of their property, which presumptively included net receipts. It was held that the resultant "heavy discrimination in favor of the domestic insurance companies of the same class and in the same business" was without justifiable basis and the statute invalid.

The case turned upon the fact (p. 515) that the foreign companies had been admitted into the state and thereby "put on a level with all other insurance

companies of the same kind, domestic or foreign, within the state," and entitled to equality of treatment under its tax laws. There remained after admission no line of demarcation between the foreign and domestic companies in the same business, by which the one and not the other might be required to pay a higher tax with respect to the same class of property. The case was one of unjustifiable classification of taxpayers.

In the case at bar there is no classification of taxpayers under the income tax law. The sole classification is of income. That classification is admittedly "extremely logical" and operates equally with respect to all taxpayers who are recipients of income in any of the specified classes. The distinction between the cases is fundamental. The Fourteenth Amendment guarantees equal protection to taxpayers similarly situated, but it "does not compel the adoption of an iron rule of equal taxation, nor prevent variety or differences in taxation, or discretion in the selection of subjects, or the classification for taxation of properties . . . ." (*State Board of Tax Commissioners* v. *Jackson*, 283 U. S. 527, 537[3])

As pointed out by appellant (*Br. p.* 14) the privileges and immunities protected under the Fourteenth Amendment are those that arise from the Constitution and laws of the United States, rather than those which spring from other sources.[4] Nothing in the

---

[3]See also to the same effect: *Bell's Gap R. Co.* v. *Pennsylvania*, 134 U. S. 232, at 237; *Pacific Express* v. *Seibert*, 142 U. S. 339, at 352; *Ohio Oil Co.* v. *Conway*, 281 U. S. 146; *Southwestern Oil Co.* v. *Texas*, 217 U. S. 114; *Am. Sugar Refining Co.* v. *Louisiana*, 179 U. S. 89; *Beers* v *Glynn*, 211 U. S. 477, 485.

[4]See to this effect: *Slaughter-House Cases*, 16 Wall. 36; *Twining* v. *New Jersey*, 211 U. S. 78; *Duncan* v. *Missouri*, 152 U. S. 377; *Prudential Ins. Co.* v. *Cheek*, 259 U. S. 530.

Constitution or laws of the United States requires the equal taxation of all property, although the Constitution of the United States does require the equal protection of all citizens similarly situated.

Appellant argues by analogy from the holding of this Court in *Chalker* v. *Birmingham & N. W. Ry. Co.*, 249 U. S. 522, that because a state may not discriminate against citizens of other states by imposing a higher tax upon them than it does upon its own citizens, a state may not tax the investments of its own citizens in other states differently than it taxes their investments at home. But the case cited does not support the conclusion nor is the rule asserted in accord with the decisions of this Court. In the *Chalker* case, the amount of an occupational tax was determined by the location of the principal office of the taxpayer, and in practical operation this criterion would prevent a citizen from receiving in more than one state the equal treatment with the citizens of that state which is required by Article IV of the Federal Constitution. But nothing in the Federal Constitution requires that a state shall twice tax the property which a citizen has left at home, subject to the taxing laws, because property which he has invested in other states is to be once taxed at home. (*Kidd* v. *Alabama*, 188 U. S. 730; *Klein* v. *Board*, 282 U. S. 19; *Lawrence* v. *State Tax Com.*, 286 U. S. 276; *Darnell* v. *Indiana*, 226 U. S. 390, all cited *supra.*)

The case last cited, (*Darnell* v. *Indiana*, 226 U. S. 390,) is cited by appellant with respect to a question which is there left undecided,—the failure of the statute there under consideration to exempt the stock of foreign corporations taxed in Indiana, equally with stock in domestic corporations there taxed. Appellant says (p. 18) that the question in the case at bar is "very like" the one there reserved. But the Vermont statute treats foreign and domestic corporations alike, taxing and exempting the income of the stock

of each in proportion as the corporate activities are taxed by Vermont. The statute considered in the *Darnell* case is wholly different in this respect from the challenged Vermont statute, but the principles upon which the other features of the Indiana statute were sustained are entirely and similarly applicable to the statute here challenged and are decisive of its validity.

Appellant repeatedly cites and relies upon *F. S. Royster Guano Co.* v. *Virginia*, 253 U. S. 412, but that case makes for the appellee. The statute there challenged presented the reverse of the provisions against which appellant complains in the instant case. There a Virginia corporation was taxed by Virginia upon all its profits wherever realized, if it did any business in Virginia, and therefore was presumably otherwise taxed in Virginia; but if it did no business in Virginia and therefore presumably paid no property tax to Virginia,[5] it was exempted from taxation on account of its profits realized anywhere. This Court incidentally pointed out (253 U. S. at 416) that doing business within Virginia, if given any effect, ought to induce more favorable rather than less favorable treatment of the corporation with respect to the taxation of its income. (See quotation *Apt's Br. p.* 19.) The operation of the Vermont statute here challenged accords with the doctrine thus expressed.

Upon the foregoing cases appellant bases his contention that a citizen is deprived of his constitutional protection if the taxes of the state of his domicile bear less heavily upon income from property which it has taxed than upon income from property which is untaxed by it. No one of the cases is measurably near

---

[5]To the effect that a corporation's property is presumptively where its business is done, see also *Bethlehem Motors Corp.* v. *Flynt*, 256 U. S. 421; *Northwestern Mutual L. Ins. Co.* v. *Wisconsin*, 247 U. S. 132; 139; *Kidd* v. *Alabama*, 188 U. S. 730, 732.

to sustaining the claim asserted. On the contrary, the rule is firmly established by the decisions of this Court heretofore discussed in this brief, (*supra*, pp. 6-9) that a state may so shape its taxation of incomes as to exempt the income from wealth which it has once taxed, and at the same time tax the receipt of income from wealth untaxed by it. The provisions of the Vermont income tax law here challenged accomplish this in their practical operation and do not otherwise discriminate.

Appellant first discusses the exemption of the income from money loaned within the State of Vermont at not over 5% per annum. He concedes (*Br. Subd.* 2, *p.* 20) the application of the established rule that classification by legislation is to be held valid "if any state of facts reasonably can be conceived that would sustain it."[6] And appellant asserts that the only state of facts which can be conceived as a basis for the exemption of money loaned within Vermont at not over 5% was the legislative purpose "to encourage the loan of money for use in Vermont business."

An examination of the history and effect of this provision discloses that the encouragement intended was the removal of the barrier of double taxation of the same intrinsic wealth, a barrier adequate to effectively discourage investment of Vermont funds within the state.

This exemption originated as a part of the general property tax law when credits were taxed equally with the general tangible property of the state. It was incorporated in the income tax law enacted in 1931, verbatim, (with unimportant omissions) from the exemption existing under the law taxing intangibles

---

[6]To the effect that this is the true rule see: *State Board of Tax Commissioners of Indiana* v. *Jackson*, 283 U. S. 527; *Rast* v. *Van Deman*, 240 U. S. 342.

at a uniform flat rate. (*Sec.* 1, *subd. V., No.* 21, *Acts of* 1925.) It had been incorporated in the intangible tax law, by reference, from the general property tax law of the state (*Gen. Laws of Vt.*, 1917, *sec.* 684, *subd. XIII*); at the time when corporate stock and credits were first withdrawn from the general property taxes for state and local purposes. The exemption was originally enacted as *Sec.* 1 *of No.* 35 of the *Acts of* 1912, entitled "An act relating to exemptions from taxation and abolishing deductions for debts owing." Prior to the enactment of this exemption, the general property tax laws of the state permitted the taxpayer to deduct his debts owing from the amount of his taxable personal property (including intangibles) but not from the amount of his real property. His tax was assessed upon the net amount of his property so determined. (*Pub. Stat. of Vt.* 1906, § 549.) This system, limited to deductions from credits, was in force in 1797 (*Laws of Vt.* 1797, *c. LXII*, § 2), was given a broader scope in 1841 (*Sec.* 14, *No.* 16, *Acts of* 1841) and since 1882 (*Sec.* 12, *No.* 2, *Acts of* 1882) had existed in substantially the same form. Apart from abuses and inequalities in administration, these tax laws operated to tax above his net worth a property owner whose debts exceeded his personal property.

By No. 510 of the Acts of 1906, the legislature created a "Commission to Investigate Double Taxation". No substantial change in the tax laws resulted until the third succeeding legislative session. Finally legislation (*Sec.* 1, *No.* 35, *Acts of* 1912) was enacted providing:

> "Money loaned within the state at a rate of interest not to exceed five percent per annum, evidenced by a promissory note, mortgage on real estate or personal estate, or by a bond for a deed, shall be exempt from taxation."

and by the same act (Sec. 2) the law authorizing deductions on account of debts owing was repealed.[7]

Subsequently (*Sec.* 1, *No.* 34, *Acts of* 1915) the exemption was extended to include credits representing the purchase price of real estate or tangible personal property within the State. This extension as to real estate, was in the terms of the exemption here challenged. By the same act (*Sec.* 4) the taxpayer was permitted to deduct from the amount of his taxable estate 50% of his debts owing, upon which he was paying the legal rate of 6% but with a limitation of $1000.

The report of the Tax Commissioner to the General Assembly in 1914[8] showed an average tax rate in the State for 1913, of 1.77% and for 1914 of 1.88% of the assessed value of the property. In 1932, when the income tax law was passed the average rate was 3.11%.

---

[7]This statute is in a form closely corresponding to the recommendation of a minority of the Commission to Investigate Double Taxation. (Report, p. 90.) The majority recommended the repeal of deductions for debts owing. (Report, pp. 49-55.) This report was entitled to judicial notice in the Court below and therefore here. See Note 8 *infra*. See also *Gibbes* v. *Zimmerman*, 290 U. S. 326.

[8]The Report of the Commissioner of Taxes is judicially noticed in the State of Vermont. (*In re Fulham's Estate*, 96 Vt. 308, 316) and is therefore to be judicially noticed here on appeal. (*Renaud* v. *Abbott*, 116 U. S. 277, 285-286; *Hanley* v. *Donoghue*, 116 U. S. 1, 7; *Abie State Bank* v. *Bryan*, 282 U. S. 765, 778; *Gibbes* v. *Zimmerman*,, 290 U. S. 326. The above data appears in the 1914 Report at pp. 309-310; in the 1932 Report at pp. 92-114.

Substantially the same information is available from the reports of the Bureau of the Census of the Department of Commerce, which are entitled to judicial notice here. (*Tempel* v. *United States*, 248 U. S. 121, 130) See *Statistical Abstract of the U. S.*, 1922, pp. 630, 631; *Fin. Statistics of State and Local Governments*, 1932, p. 1821 from which the average rate may be obtained by dividing the tax receipts by the taxable property.

From the history of the challenged exemption of money loaned within this state at 5% or less, it is thus apparent that:

(1) Before the enactment of the exemption statute a loan of money within the state brought into being two taxable interests where only one existed before. The same was true in the case of a sale on credit. In neither case was any new wealth created.

(2) Both interests were subjected to taxation at the rate of nearly two percent, except insofar as the debtor had personal property against which he could offset his debt.

(3) Thus the ownership of property acquired by incurring indebtedness resulted in taxation which was disproportionate and prohibitive.

(4) The legislature in recognition of this doubled tax burden caused the subject of double taxation to be investigated and finally evolved a plan which would remove the unreasonable burden upon investment of funds in Vermont.

(5) The plan operated alike with respect to funds of citizens of Vermont and citizens of other states. The evil which it was sought to remedy existed only when the state taxed both of two property rights together representing but a single item of wealth. The remedy therefore could be applied only where the two property rights—the credit and the wealth out of which it arose—both remained in the state. The exemption therefore was limited to loans or credits within the State. By this means double taxation was measurably avoided and investment encouraged by making it economically practicable.

(6) By the enactment of the taxing statute imposing a flat rate upon intangibles the situation was not fundamentally changed. Under that law the repeal of the "5% exemption" would have recreated the so called double taxation, although at a lowered rate on the credit and a higher rate on the debtor's investment of the proceeds of the credit.

(7) The same conditions would have existed with respect to the omission of the exemption in the income tax law; for the taxation of income is essentially the taxation of the property from which it is derived.[9]

The obvious effect of the change in taxation thus enacted in 1913 and 1915 was to tax the property and exempt the credit, provided the creditor yielded 1% of the legal rate of interest; and if the creditor exacted the legal rate of interest, to tax the creditor and permit the debtor to deduct one-half of the taxable debt (with limitations) which amounted to substantially 1%. In other words, the legislature recognized that the sale on credit of property within the State or the lending of money within the State to become a part of the property of the debtor[10] in fact created no new wealth and so a single tax was exacted, within limitations. The incidence of the tax was substantially equally divided between the debtor and the creditor. The system thus achieved is analogous to systems for the axation of

[9]See *Pollock* v. *Farmers Loan & Tr. Co.*, 157 U. S. 429, 581; *Weston* v. *Charleston*, 27 U. S. (2 Pet.) 449; *Railroad Co.* v. *Jackson*, 7 Wall. 262; *Opinion of Justices*, 220 Mass. 613; *Wright* v. *Georgia R.R.*, 216 U. S. 420, hereinafter again cited.

[10]The statute as construed by the State Court (Rec. 24, (fol. 42)) relates to money invested in Vermont and not merely to the locus of the loan contract.

credits in force in many jurisdictions and uniformly sustained by the courts."

Thus the statute here challenged is essentially like statutes in force in many states wholly exempting notes secured by mortgage upon real estate within the state, or upon personal property within the state, or a certain class of property within the state. Yet these statutes have never been deemed violative of constitutional guaranties. The practical operation of the statute is similar to statutes such as that of Nebraska permitting the mortgagor to offset against his debt taxes paid upon the real estate to the amount of the mortgage debt. In Colorado it is provided that where property in the state is mortgaged, the property and notes shall be assessed at the value of the property only, and the notes shall not be otherwise assessed. Connecticut and Massachusetts have provisions that money at interest secured by a mortgage of domestic real estate shall be exempt from taxation to the amount of the taxable value of the real estate. In Louisiana and in Montana, debts secured by mortgage of property within the state are exempt. In Oregon, prior to the amendment of 1931, there was a similar exemption as to loans secured by real estate mortgage. Utah had a constitutional provision prior to 1930 for exemption when the mortgage was upon real or personal property, and Wyoming has a similar statutory provision as to mortgages upon property within the state.

Mississippi exempts all notes and evidences of indebtedness and money loaned at a rate of interest not exceeding 6%. In New York there is a mortgage recording tax of fifty cents per one hundred dollars of principal debt, and, prior to 1933, all mortgages and

---

[11]In an appendix to this brief the statutory provisions discussed in this and succeeding paragraphs are reviewed in more detail with citations to the statutes and decisions of state courts with respect tothem. The decisions are there collected; p. 44.

the secured obligations were free from state or local taxation. The Pennsylvania statutes provide for the exemption from local taxation of mortgages, judgments, etc. and money owing upon agreements for the sale of real estate. Indiana and North Carolina have somewhat similar provisions. In the former state an owner of real estate, indebted by way of mortgage, may deduct up to $1,000 of the mortgage debt from the assessed value of the real estate but not exceeding one-half the value of the real estate; and in the latter state, notes and mortgages given to build, repair or purchase a home not exceeding $8,000, are exempt to 50% of the value of the notes and mortgages. Washington does not consider mortgages, notes, credits, tax certificates or bonds as property for tax purposes, and no deductions are allowed for debts owing. Finally, in Wisconsin, all money or debts due and all stocks and bonds, not especially provided for, are exempt.

It will be seen, therefore, that viewed in the light of its practical operation, the statute challenged in the instant case is within the "general usage" of the states, which in the frequently quoted statement in *Bell's Gap R. Co.* v. *Pennsylvania, supra,* (134 U. S. 232, 237), was said not to be forbidden by the Fourteenth Amendment.

In view of the foregoing considerations it cannot be said that a classification resulting in the exemption of money loaned within the State of Vermont at not to exceed 5% per annum, precludes the assumption that the classification was made in the exercise of legislative judgment and discretion, (*Stebbins* v. *Riley,* 268 U. S. 137, 143; *Swiss Oil Co.* v. *Shanks,* 273 U. S. 407, 413-414) or that no state of facts "reasonably can be conceived that would sustain it," (*State Board of Tax Commissioners* v. *Jackson,* 283 U. S. 527, 537; *Rast* v. *Van Deman,* 240 U. S. 342, 357) or that it does not have "a reasonable relation to some permitted end of governmental action," or that it is not "reasonably found in the purposes and policy of taxation." (*Watson*

v. *State Comptroller of New York, supra,* 254 U. S. 122, 125.)

It is the contention of appellant that a legislative purpose to encourage the investment of Vermont money for the assistance of the agricultural and industrial interests of the State is an unlawful and prohibited purpose and the very ground of his attack upon the statute. (*Br. p.* 20) But without the exemption, a debt-burdened class of residents would be subjected to tax laws oppressive in proportion to the taxpayers' indebtedness. As this Court said at the last term with respect to the exemption of carriers of farm produce, (*Aero Mayflower Transit Co.* v. *Georgia,* 55 S. Ct. Rep. 709, 79 L. ed. Adv. Op. 749) in view of the plight of the Georgia farmer as pictured, "to free him of fresh burdens might seem to a wise statecraft to be a means whereby to foster agriculture and promote the common good."

In *Stephenson* v. *Binford,* 287 U. S. 251, this Court held that a state has a right by exemptions in its taxing system to foster a fair distribution of traffic between railroads and highway carriers. In *Southwestern Oil Co.* v. *Texas,* 217 U. S. 114, in dealing with a tax upon wholesale but not retail dealers in oil, this Court held that a purpose to encourage retail dealing was not objectionable. In *Barbier* v. *Connolly,* 113 U. S. 27, it is said (p. 31) that no amendment to the Constitution "was designed to interfere with the power of the State, sometimes termed its 'police power' . . . . to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity." While this language related primarily to the police power, it was cited in *Pacific Express Co.* v. *Seibert,* 142 U. S. 339, at 354, and quoted in *Bell's Gap R. Co.* v. *Pennsylvania,* 134 U. S. 232, at 238, in support of the taxing power, and in the *Bell's Gap* case it was held that the Fourteenth Amendment was not to be given a construction which "would render

nugatory those discriminations . . . . . which are necessary for the encouragement of needed and useful industries," (134 U. S. at 237) language which is quoted in *Pacific Express* v. *Seibert*, 142 U. S. 339, at 352, and in *Citizens Telephone Co.* v. *Fuller*, 229 U. S. 322 at 329.

The legislative purpose to encourage, approved in the foregoing cases, had no necessary relation to other states. But in *New York* v. *Roberts*, 171 U. S. 658, this Court in dealing with a franchise tax imposed by New York upon certain corporations said, (pp. 665-666)

> "It is said that the operation of that portion of this taxing law which exempts from a business tax corporations which are wholly engaged in manufacturing within the State of New York, is to encourage manufacturing corporations which seek to do business in that state to bring their plants into New York. Such may be the tendency of the legislation, but so long as the privilege is not restricted to New York corporations, it is not presumed that thereby any ground is afforded to justify the intervention of the Federal Courts."

In *National Union Fire Ins. Co.* v. *Wanberg*, 260 U. S. 71, 75, a statute which bore heavily on foreign insurance companies was held to be valid "however wise it may be for a legislature to give weight to such a consideration in securing the use of foreign capital for its people."

It has never been supposed that a state is forbidden to ameliorate its tax laws lest they induce an "embargo" (*Apts. Br. p.* 27) upon the movement of capital between the states. (See *Board* v *Illinois*, 203, U. S., 553.)

The credit exemption challenged in this case has its roots in a domestic policy for the avoidance of

double taxation. It is not to be nullified because residents of Vermont may find it more profitable to invest their money within the state than beyond its borders, nor because the wisdom of the policy may be challenged by argument and opinion of serious strength, (*Rast* v. *Van Deman*, 240 U. S. 342, 357) nor is it to be nullified by hypothetical and unreal possibilities, (*Pullman* v. *Knott*, 235 U. S. 23, 26) nor by abstract theories or thinking up objections, (*Bandini Petroleum Co.* v. *Superior Court*, 284 U. S. 8, 22.)

When a state tax law is challenged under the Federal Constitution, "the decision is not dependent upon the form in which the taxing scheme is cast, nor upon the characterization of that scheme as adopted by the state court. .... the controlling test is to be found in the operation and effect of the law as applied and enforced by the state." (*St. Louis S. W. Ry. Co.* v. *Arkansas*, 235 U. S. 350, 362, 363; *Texas* v. *Brown*, 258 U. S. 466, 479; *Gregg Dyeing Co.* v. *Query*, 286 U. S. 472, 482; *Wagner* v. *Covington*, 251 U. S. 95, 102.) This Court considers, not the language of the state court, but the operation of the statute as construed and applied by the state court. (*Hope N. G. Co.* v. *Hall*, 274 U. S. 284, 288.)

The record is devoid of any evidence which indicates that any of the capital of appellant, or any capital of any other resident of Vermont, has been driven from other states into Vermont, or unreasonably retained within Vermont, by reason of the provisions of the challenged tax law; nor is there any evidence from which a tendency in that direction can be deduced.

From the foregoing it is apparent that the challenged exemption of credits is within the established right of the state to avoid double taxation of property rights within its jurisdiction; that its purpose to encourage investments by removal of tax barriers was within its legitimate powers; that the exemption is not

shown to have so operated as to achieve forbidden purposes. It is therefore not the exercise of any power prohibited by the constitution to the states.

The other exemption which appellant challenges is the provision exempting corporate dividends proportionately to the payment of taxes in this State by the corporation.

The effect of the income and franchise tax law, (*Pub. Laws of Vt.* (1933) *Chap.* 39, 40 & 41; *No.* 17, *Acts of* 1931) as applied to corporate dividends is to tax all corporations, whether domestic or foreign, at the rate of 2% as to income attributable to business within Vermont, (*Ib., Chap.* 40, *Sec.* 888. *See Apt's Br. p.* 5) and to tax resident shareholders at the rate of 4% upon the whole or a proportional part of dividends received from corporations, (again whether domestic or foreign) attributable to business outside of Vermont and thus untaxed by the Vermont franchise tax. (*Ib. Chap.* 39, *Sec.* 873, *II*, (*e*). *See Apt's. Br. p.* 4.)

The appellant seems to admit the right to exempt from taxation shares of stock when the corporation has borne the tax burden imposed by the State. He complains that the Vermont statute discriminates against resident investors who place their wealth outside the State; that this discrimination operates inexorably in every case.

But an exemption of shares of stock, complete or partial, under the Vermont income tax law arises out of the imposition of a franchise tax upon the corporation. The imposition of a franchise tax is conditioned and proportioned upon business within the State. The locus of a corporate business is by fair inference the locus of its principal property.[12]

All the tangible property of corporations within the state is taxed at the local rate (*Pub. Laws of*

[12]See cases cited *supra* p. 13, note 5.

Vt. §§ 571, 588.) Both the report of the State Tax Commissioner to the Legislature and the United States Census show that this rate is about 3%. It[13] follows that in general the exemption of stock in corporations is conditioned upon the payment by the corporation of a property tax substantially proportioned to the extent of the exemption.

Entirely apart from any franchise tax, the payment of the property tax would justify the exemption of the stock from a similar property tax. (*Kidd* v. *Alabama; Darnell* v. *Indiana; Klein* v. *Supervisors; Lawrence* v. *State Tax Commission, all cited supra.*)

But by the Vermont tax laws the income tax is substituted for the property tax upon shares of stock.[14] The income tax is therefore in effect a tax upon the shares. See *Pollock* v. *Farmers Loan & Tr. Co.*, 157 U. S. 429, 581; *Weston* v. *Charleston*, 27 U. S. (2 Pet.) 449; *Railroad Co.* v. *Jackson*, 7 Wall. 262; *Opinion of Justices*, 220 Mass. 613; *Wright* v. *Georgia R. R.*, 216 U. S. 420.

It follows that wholly irrespective of the franchise tax, the income from shares of corporations doing business in Vermont may fairly be exempted from taxation, in proportion to business within the state, as the statute in effect provides.

But the statute imposes an additional condition that the corporation shall pay in addition to its property tax a franchise tax at the rate of 2% upon its entire net income attributable to business within the state. It is obvious that in the ordinary case the net income of the corporation will exceed the distribution of dividends; that, therefore, the 2% tax will be applied to a wider base than the 4% tax. The excess of burden upon a stockholder who pays a 4% dividend

---

[13]See *supra* p. 16, note 8.

[14]See discussion, *supra*, p. 15.

tax can never exceed 50% of his tax paid, and will generally be less. Entirely apart from the property tax, the franchise tax presents a disproportion to the taxation of shares not materially different than that sustained by this court in *Klein* v. *Board of Supervisors*, 282 U. S. 19, under a statute where corporate stock was exempted if there was subjected to the tax laws of the state as little as 75% of the corporate property with a valuation of 75% of its true value.

When the franchise tax and the property tax are considered together the result is that almost, if not quite, without exception, income from shares of stock will be exempted only when the corporation has paid a tax much in excess of the tax exacted upon the income of non-exempt shares.

Appellant's whole argument is based upon the fallacy that the exemption condition, of subjection to the franchise tax, entails only a payment of that tax. In fact, it entails the payment of general property taxes at a rate fifteen times as great. When the full consequences of the condition are considered the whole argument falls.

It thus clearly appears that the state court did not err in denying the claims of appellant that his privileges and immunities as a citizen of the United States had been abridged and that he had been deprived of his property without due process of law, and denied the equal protection of the laws.

APPELLANT'S POINT II.

It is urged by appellant in *Point II* of his Brief (*Br. p.* 27) that the Income and Franchise Tax Law places a burden upon interstate commerce which amounts to an embargo, both because of the rate differential between the tax on corporate franchises and the tax on dividends, and more especially because interest from money loaned at or under 5% per annum

within Vermont is exempt and the interest from money similarly loaned elsewhere is taxed.

What has already been said in regard to Appellant's *Point 1* is equally apposite in this connection. The exemptions as to of dividends and money loaned in Vermont at 5% or less is an attempt to avoid double taxation. This result is measurably accomplished by the taxing system of the State. Any inequalities which may exist in specific cases are purely fortuitous, the result of the impossibility of creating a taxing system achieving mathematical certainty and ideal equality. But aside from the sustaining effect of the ultimate fairness and equality of this tax law, it is submitted that there is nothing in the record upon which it can be held that there is any interstate commerce question involved in this case or that any of appellant's investments were transactions in, or having the nature of, interstate commerce.

Appellant, to support his claim of burden on commerce, relies upon the combined effect of *Northwestern Mutual Life Ins. Co.* v. *Wisconsin*, 247 U. S. 132 and *New Jersey Telephone Co.* v. *Tax Board*, 280 U. S. 338, 346; but they have no such tendency. In the *Wisconsin* case the question undecided, to which appellant refers, arose not out of the normal characteristics of loans or of purchases of stock in other states, but out of the manner in which a huge volume of "foreign investment business" was conducted, constituting as it did one of the main activities of a large corporation, involving interstate shipment of securities etc. The question undecided was not as to the general rule that investments are not interstate commerce, but rather as to whether the general rule applied in such a case.

The *New Jersey* case applies to telephone companies the familiar rule that a state may not burden interstate commerce by taxation, whatever the instrumentalities or means employed in imposing the tax.

Whatever resemblance there is between a citizen's out-of-state investments and communication by telephone and telegraph, this Court has invariably distinguished between them. The rule that loans and investments are not, ordinarily at least, interstate commerce, is firmly established by analogy and by direct decision.

Insurance contracts, though between citizens of different states, are not interstate commerce. (*Paul* v. *Virginia*, 8 Wall. 168; *Hooper* v. *California*, 155 U. S. 648; *New York Life Ins. Co.* v. *Deer Lodge County*, 231 U. S. 495; *National U. Fire Ins. Co.* v. *Wanberg*, 260 U. S. 71, 75; *Bothwell* v. *Buckbee*, 275 U. S. 274.) Advertising contracts are not. (*Blumenstock* v. *Curtis Pub. Co.*, 252 U. S. 436.) Nor is interstate credit eporting. (*U. S. F. & G. Co.* v. *Kentucky*, 231 U. S. 394.) Nor is the business of an emigrant agent. (*Williams* v. *Fears*, 179 U. S. 270.) Nor is purchase by a citizen of one state of real property in another. (*Munday* v. *Wisconsin Tr. Co.*, 252 U. S. 499.) Nor is making promissory notes for interstate transmission, creating interstate credits and resulting in interstate payments. (*Graniteville Mfg. Co.* v. *Query*, 283 U. S. 376.) Nor is dealing in bills of exchange drawn between the states. (*Nathan* v. *Louisiana*, 8 How. 73.) Nor is the purchase of commercial paper in another state. (*Hemphill* v. *Orloff*, 277 U. S. 537.) Nor is the purchase or sale of securities in one state by or for a resident of another. (*Hatch* v. *Reardon*, 204 U. S. 152.) Or commodities. (*Broadnax* v. *Missouri*, 219 U. S. 285.) Nor is the acceptance of deposits for transmission abroad foreign commerce. (*Engel* v. *O'Malley*, 219 U. S. 128.) The decisions cover the whole range of contractual relations, creation of credits and acquisition of securities in a state by a citizen of another state.

The purchase of securities is essentially local in character, (*Hall* v. *Geiger-Jones Co.*, 242 U. S. 539; *Hatch* v. *Reardon*, *supra*,) and the lending of money,

(*Graniteville Mfg. Co.* v. *Query, supra, Hemphill* v. *Orloff, supra,*) and the making of contracts, (*Hooper* v. *California; New York L. I. Co.* v. *Deer Lodge County,* both *supra.*) The possibility that some interstate shipment or commerce will ensue is insufficient to change the character. (*Moore* v. *New York Cotton Ex.* 270 U. S. 593; *Broadnax* v. *Missouri, supra*; see also *Heisler* v. *Thomas Col. Co.*, 260 U. S. 245; *Nashville, C. & St. L. Ry. Co.* v. *Wallace*, 288 U. S. 249.)

Appellant is taxed upon certain credits due from non-residents and upon dividends from corporations not doing business in Vermont. The record, however, is barren of any showing that these loans or purchases of securities were made from Vermont or elsewhere than in the state of the domicile of the debtor or the corporation; or that credits or funds or correspondence moved from Vermont, or that anything has or will be transmitted in interstate commerce. The silence of the record is particularly significant in view of the fact that appellant, though a resident of Vermont, is a stockbroker and a member of a New York business partnership. (*Rec. p.* 6*A*, *Ex. A*, *Question* 3.) Since loans without the State and ownership of securities without the State are not necessarily interstate commerce and there is no showing that the transactions taxed to appellant involved interstate commerce, appellant's Constitutional rights are not affected and he is not entitled to be freed from the tax imposed.

Darnell v. *Indiana*, 226 U. S. 390;

First Natl. Bank of Shreveport v. *Louisiana Tax Com.*, 289 U. S. 60, 65;

Brown-Forman v. *Kentucky*, 217 U. S. 563.

Moreover, if interstate commerce were involved this taxing statute is not thereby rendered invalid.

The thing taxed is the receipt and enjoyment of income in Vermont.

See *Lawrence* v. *State Tax Com.*, 286 U. S. 276;
U. S. Glue Co. v. *Oak Creek*, 247 U. S. 321, 328;
Armour v. *Virginia*, 246 U. S. 1, 7.

Appellee therefore submits that there was no error in the ruling of the State Court that no interference with interstate or foreign commerce results from the challenged statute.

APPELLANT'S POINT III.

If the exemptions challenged should be held invalid, the immediate result would be the excision of such exemptions from the statute.

Pub. Laws of Vt. (1933) § 917;
Utah Power & Lt. Co. v. *Pfost*, 286 U. S. 165, 184;
Attorney General v. *Rutland Ry. Co.*, 86 Vt. 328.

The appellant, who had been discriminated against through the exemption of others in violation of the Federal law, would be entitled to equal treatment. While appellant is not required either himself to seek an increase in the taxes of others nor await the delayed action by state officials upon their own initiative, yet, if the income tax law is enforced, without the exemptions which may he held invalid, appellant should be subject to reassessment equally with others of the same class, even though the reassessment is by virtue of any additional legislation.

Graham v. *Goodcell*, 282 U. S. 409;
United States v. *Heinszen*, 206 U. S. 370;

Rafferty v. *Smith*, 257 U. S. 226, 232;
Seattle v. *Kelleher*, 195 U. S. 351;
Bellows v. *Weeks*, 41 Vt. 590;
Smith v. *Hard*, 59 Vt. 13;
Durkee v. *Barre*, 81 Vt. 530.

If the income tax law be held invalid because of the alleged discrimination, the invalidity applies as well to the preceding intangible tax law, thereby restoring the operation of the general property tax upon credits and dividends not lawfully exempt. Nothing in this decision ought to prevent the assessment of appellant equally with others of his class at such time and in such manner as might be warranted by the state law, within the limits of the federal constitution, even though the result is that all in petitioner's class will be subjected to more burdensome taxation than that imposed by the challenged statute.

APPELLANT'S POINT IV.

Appellant here raises question with respect to a tax of $32 which was exacted from him by reason of the denial of a personal exemption of $800. Appellant challenges the statutory provision permitting the deduction of $800 to a husband and wife, but only if they shall receive no income from any source other than "from the ownership of or interest in any stock, bond, note or other interest bearing security". (*Pub. Laws* 873, *subd. II* (*f*) 2.) This group of income (denominated by the Commissioner in administration *"Class B Income"*) is throughout the act differentiated from income from personal services, trades, business, commerce and net rentals from real and personal property (denominated by the commissioner in administration *"Class A Income"*). A separate and larger exemption is authorized with respect to Class A Income (*Pub. Laws.* 880, *subds.* (*a*) (*b*) & (*c*)).

Exemption of funds needed for the support of an average family are provided in all income tax laws. Some exemption of this sort has occurred in all the Federal income tax laws.[15]

The basis of such exemption is "to exclude from taxation the living expenses of an average family and thus to enable the poor man to escape becoming a public burden." (*Peacock* v. *Pratt*, (C.C.A. 9) 121 F. 772; *Black, Inc. and Other Fed. Tax.*, 4th ed. §133; and see dissenting opinion of Harlan, J. in 158 U. S. at 675.)

Certainly there is no obligation upon the legislature to provide two exemptions on account of family subsistence. A taxpayer with a subsistence exemption from one class of income is not subjected to unjust discrimination because he is not permitted to take an exemption from another class, any more than a taxpayer would be entitled to an exemption of two homesteads because he occupied alternately two places of residence. If the taxpayer had other than Class B Income, his need was less than that of the taxpayer who had no income in addition to Class B Income, and generally, he would have availed himself of an exemption from his Class A Income. In any aspect there is a substantial difference between income from intangibles and income from business and rents. All taxpayers are classified by the same criteria, having a real relation to the purpose and object of the exemption. It cannot be said that no "state of facts reasonably can be conceived that would sustain" such a classification. (*Rast* v. *Van Deman*, 240 U. S. 342, *State Board* v. *Jackson*, 283 U. S. 527 both cited *supra*,) or that the law

---

[15] Section 216c of the Acts of 1918, 1921, 1924, 1926 and Sec. 25c of the Acts of 1928 and 1932.

In the dissenting opinion by Harlan, J. in *Pollock* v. *Farmer's Loan & Trust Co.*, 158 U. S. 601, 675, he says that such an exemption was allowed in the income tax laws of 1861 and in subsequent laws and was never questioned.

precludes the assumption that the classification was made in the exercise of legislative judgment and discretion. (*Stebbins* v. *Riley*, 268 U. S. 137, 143 cited *supra.*) Or that there is between the classes no ground of difference "having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." (*Ohio Oil Co.* v. *Conway*, 281 U. S. 146, 160 cited *supra.*)

The wisdom of such a classification may be opposed by argument and opinion of serious strength without invalidating the classification. (*Rast* v. *Van Deman, supra.*) Inequalities and discriminatory results from the minutiae of tax exemptions is not uncommon. A wide variety of such hypercritical objections to the Federal income tax law was considered by this Court and rejected in *Brushaber* v. *Union Pacific*, 240 U. S. 1, 23-25, and a provision with a considerable similarity to the one here challenged was sustained in *McPherson* v. *Fisher*, 143 Ore. 615, 23 P. (2d) 913. "The problems of government . . . may justify, if they do not require rough accommodations,—illogical it may be, and unscientific (*Salomon* v. *State Tax Com.*, 278 U. S. 484, 491; *Metropolis Theatre* v. *Chicago*, 228 U. S. 61, 69, 70). "Mere inequalities or exemptions in the matter of state taxation are not forbidden by the Federal Constitution" (*Beers* v. *Glynn*, 211 U. S. 477, 485.)

Apart from the foregoing, it should be noted that the $800 claimed exemption was not reported because "the reporting thereof would have been either uncalled for or ineffective under the terms of the official form." (*Rec. p.* 12, *lines* 4-5; *p.* 14 [*fols.* 24-25,] *par. No.* "1".)

Although the wife is entitled to claim all or any part of the exemption, and it appears (*Rec.* 6-*a*, *Exhibit A*) that she filed a separate return, it does not appear whether she claimed all or any part of the exemption. In view of this situation, reversible error did not appear in the record in the Court below and does not appear in the record here.

APPELLANT'S CONCLUSION.

Appellant argues that the invalidity of the challenged exemptions would destroy the entire statute, notwithstanding its severability clause. This is, of course, a different question than the right of appellant to be protected from unequal taxation discussed under Point III.

In *Field* v. *Clark*, 143 U. S. 649, 696-697, it was said:

> "Unless it be impossible to avoid it, a general revenue statute should never be declared inoperative in all its parts because a particular part relating to a distinct subject may be invalid. A different rule might be disastrous to the financial operations of the government, and produce the utmost confusion in the business of the entire country."

In *Utah Power & Lt. Co.* v. *Pfost*, 286 U. S. 165, 184, 185, it was held that exemptions from a license tax on the generation of electricity, which were held to be invalid, could properly be eliminated without the destruction of the act. In *Western Union Tel. Co.* v. *Texas*, 105 U. S. 460, 466, and in *Oklahoma* v. *Wells Fargo*, 223 U. S. 298, 302, it was held that whether the statute could be construed as severable of course would be ultimately for the state court.

In the case at bar the purpose of the legislature to tax income generally ought not to be rendered wholly inoperative because of any defect in lines of demarcation exempting income because the property was once taxed or because of discriminatory provisions as to subsistence exemptions.

Appellee submits that the challenged exemptions are not violative of the rights of appellant as a citizen of the United States and do not involve the exercise by the State of Vermont of any power prohibited to the states.

Lawrence C. Jones,
Attorney General.

Guy M. Page,
Counsel for Appellee.

Seymour P. Edgerton,
Of Counsel.

APPENDIX

Provisions in the laws of various states wherein exemption from taxation is given to money due or to become due when the debt is secured by real estate or chattel mortgage, or wherein exemption is given to credits evidenced in various forms.

In the following states exemption has been given to loans or obligations secured by mortgage of property within the jurisdiction, in some instances of real property only and sometimes including chattels; and in some instances including money, credits, etc. though unsecured.

COLORADO

Compiled Laws, 1921, § 7195.

Property includes real, personal and mixed tangible property, rights, credits and intangibles.

> "*Provided*, that where any property within this state is mortgaged, conveyed or pledged for the security of a loan or debt then owing the said property and the notes . . . (etc.) . . . shall be assessed as a unit . . . . and as of one value, and as the value of said property so mortgaged . . . only, and any such notes . . . (etc.) . . . shall not be otherwise returned or assessed."

In *Washington County* v. *Murray*, 71 Colo. 522, the foregoing exemption was held not to violate a constitutional provision that all property shall be taxed. If both real estate and mortgage are taxed, the tax is double.

CONNECTICUT

General Statutes, Revision of 1930, *Sec.* 1174.

> Sec. 1174. *Exemption of money loaned on mortgages in certain cases.* Money loaned on interest and secured by a mortgage of real estate in the state shall be exempt from taxation to an amount equal to the assessed value of the mortgaged real estate in the assessment list of a town, city, borough or other taxing district in which it shall be situated, but the excess of any such loan over such valuation shall be assessed and taxed in the town, city, borough or other taxing district in which such mortgaged real estate shall be situated."

Skilton v. *Colebrook*, 76 Conn. 666, contains a comprehensive discussion of the history of Connecticut's method of dealing with credits for tax purposes, disclosing a general intent to avoid double taxation of the same values.

LOUISIANA

Constitution, 1921, *Art.* X, *Sec.* 4 as amended.

> "The following property, and no other, shall be exempt from taxation; . . . Cash on hand or on deposit, loans or other obligations secured by mortgage on property located exclusively in the State of Louisiana, and the notes or other evidence thereof . . ."

Cited in *State* v. *Jefferson Finance Co.*, 163 La. 1005, 113 So. 355, holding that the exemption does not relieve a firm dealing in such loans from the license tax, and in *Bemis Bro. Bag Co.* v. *Louisiana Tax Comm.*, 158 La. 1, 103 So. 337, holding that this provision does not exempt credits on book accounts.

MAINE

Revised Statutes, 1930, *c.* 13, *Sec.* 6, XIII, *p.* 259.

Exemptions:

> "All loans of money made by any individual or corporation and secured by mortgage on real estate situated in this state."

This subsection was first enacted in 1911 and has never been construed.

MASSACHUSETTS

General Laws, Ter. Ed. c. 59, *sec.* 4.

> "Personal estate, for the purpose of taxation shall include . . . money at interest, and other debts due the person to be taxed more than he is indebted or pays interest for, but not including in such debts due . . . any loan on mortgage of real estate, taxable as real estate, except the excess of such loan above the assessed value of the mortgaged real estate . . ."

In *United States Trust Co.* v. *Comm.* (1923) 245 Mass. 75, 139 N. E. 794, it appeared that some assets of the trust company were in notes payable to it, secured by notes of others endorsed to it, those notes in turn being secured by real estate mortgages assigned to it and recorded. The company's franchise tax is determined by fair cash value of the shares less the value of real estate subject to local taxation.

It was held that these notes for tax purposes are real estate, and should be deducted. The court said, at p. 77:

> "The design of the General Court in enacting these statutes was to prevent that which in substance and effect was double taxation upon land."

This was expressed in the title of the original act (*St.* 1881, *c.* 304) and is the necessary result of taxing the land and the credit.

MONTANA

Revised Codes of Montana, 1921, *sec.* 1998.

> "1998. Exemptions from taxation. . . . . evidences of debt secured by mortgages of record upon real or personal property in the state of Montana . . . . "

State v. *Jones*, 80 Mont. 574, 261 P. 356 (1927) held that an inheritance tax was not upon property and the above exemption did not apply to such a tax.

Bank of Miles City v. *Custer County*, (1933) 93 Mont. 291, 19 P. (2d) 885, contains a reference to this provision in connection with the taxation of a state bank.

OREGON

Oregon Code Ann. 1930, *sec.* 69-104, *Vol.* 3, *p.* 5303.

> "69-104. Exempt property.
>
> 9. All notes secured by recorded mortgages on real property." (Deleted by amendment in 1931.)

A former Oregon statute taxing the mortgage debt as a part of the real estate was sustained in this Court. *Savings & L. Soc.* v. *Multnomah County*, 169 U. S. 421.

UTAH

Constitution, Art. 13, *sec.* 3 (Prior to Amendment of Nov. 4, 1930).

> ". . . Provided further, That mortgages upon both real and personal property shall be exempt from taxation . . . "

McLaughlin v. *Cluff*, 66 Utah 245, 240 P. 161, raised the question of taxability of foreign held bonds passing by devise. The court says at p. 255:

> "So far as general taxation is concerned, it has always been the policy of the people of this state to exempt mortgages from taxation, whether held by residents or non-residents." (citing Const. above.)
>
> "If a tax is imposed upon such mortgages, the borrowers who are the people of this state, must themselves pay the tax which will be represented in increased interest rates."

WYOMING

Wyoming Revised Statutes, 1931, *Sec.* 115-107.

> "Mortgages exempt. All mortgages upon property within the state of Wyoming, whether real or chattel, together with the indebtedness thereby secured, shall be exempt from taxation; provided that the mortgaged property, whether real or personal, shall be taxed at its true value in money."

No case has been found dealing with this exemption.

In the following states varying provisions permit the exemption of notes, credits, loans, etc. or one or more of them generally, or in some limited form, either to avoid double taxation or to promote development of real estate.

INDIANA

Burns Indiana Statutes Ann. 1933. *Sec.* 64-209 (14043) *Vol.* 11, *p.* 512.

> "Any person being the owner of real estate liable for taxation with (within) the state of

Indiana, and being indebted in any sum secured by mortgage upon real estate, may have the amount of such mortgage indebtedness, not exceeding one thousand dollars ($1000) existing and unpaid upon the first day of March of any year, deducted from the assessed valuation of mortgage premises for that year, ... Provided, that no deduction shall be allowed greater than one-half of such assessed valuation of such real estate." (Acts 1919, Ch. 59, sec. 57)

Sustained as constitutional in *State v. Smith*, 158 Ind. 543, 63 N. E. 25, 64 N. E. 18, citing *Savings & Loan Soc.* v. *Multnomah County*, 169 U. S. 421. The Indiana Court said:

> "But if A sells a tract of land to B for $1,000, and takes a mortgage back for the entire purchase money, and if the mortgagee be a resident of this state, there is brought into existence, in the absence of the enactment in question, additional taxable property to the value of $1,000, although it is apparent that by such a transaction the state's wealth has not been increased a farthing."

MISSISSIPPI

Mississippi Code 1930 (*Ann.*), *Ch.* 61, *sec.* 3108 (v).

> "The following shall be exempt from taxation:
>
> (v) . . . all notes and evidences of indebtedness bearing a rate of interest not greater than six per cent per annum, and all money loaned at a rate of interest not exceeding six per cent per annum . . ."

No case has been found dealing with this provision.

NEW YORK

Birdseye's Consolidated Laws of New York, 2 ed. vol. 8, pp. 8581 ff; Tax law, secs. 251, 253.

New York imposes a recording tax of 50¢ per $100 of principal debt or major fraction thereof, (sec. 253) and exempts all mortgages and the obligations which they secure from state or local taxation (sec. 251) (except bank share tax, insurance company franchise tax, trust company and savings bank franchise tax, and transfer tax.)

This section does not protect mortgage interest against income tax. *Clyde* v. *Gilchrist*, 262 U. S. 94.

Sec. 251 was repealed by *Laws* 1933, *c.* 470.

NORTH CAROLINA

Constitution, Art. V, *Sec.* 3 (As amended in 1920).

All real and personal property shall be taxed according to its true value in money

> "*Provided*, notes, mortgages and all other evidences of indebtedness or any renewal thereof, given in good faith to build, repair or purchase a home, when said loan does not exceed $8,000 and . . . (is) . . . made to run for not less than one nor more than thirty-three years, shall be exempt from taxation of every kind for fifty per cent of the value of the notes and mortgages, . . ."

provided the holder lives in county where land lies and lists it there.

PENNSYLVANIA

Purdon's Penna. Statutes Ann., Title 72, *sec.* 4731. (Apr. 4, 1868; P. L. 61, sec. 1).

> "All mortgages, judgments, recognizances and moneys owing upon articles of agreement

for the sale of real estate . . . . shall be exempt from all taxation except for state purposes:"

This section does not apply to corporate obligations, and only to certain enumerated counties.

The title of this act was "An Act to promote the improvement of real estate."

The words "for the sale of real estate" are confined to "articles of agreement" for the sale thereof.

> "The exemption of mortgages is general because they encumber real estate, and by relieving the land from the tax which the mortgagee may by law add to his interest without usury, the ability of the mortgagor to improve his real estate is increased."

Westmoreland County v. *Fries*, 80 Pa. 51.

WASHINGTON

Remington's Compiled Statutes, 1927 *Supp.*, *sec.* 11097-5, *p.* 1424.

> ". . . Mortgages, notes, accounts, certificates of deposit, tax certificates, judgments, state, county, municipal and taxing district bonds and warrants shall not be considered as property for the purpose of this act, and no deduction shall hereafter be made or allowed on account of any indebtedness owed."

The above statute formerly included "monies" and to that extent violated a state constitutional requirement that all property be taxed.

This was held in *State ex. rel. Wolfe* v. *Parmenter*, 50 Wash. 164.

The court further said, pp. 175, 176: "The multiplicity of credits does not add to the property wealth

of the state. . . . To tax both the right and the property it represents is clearly double taxation."

WISCONSIN

Wisconsin Statutes, 1933, *Ch.* 70, *Sec.* 70.11.

"70.11 Property exempt from taxation. (10) All moneys or debts due or to become due to any person, and all stocks and bonds . . . . not otherwise specially provided for."

This statute apparently came in with the income tax law. Previously the state had taxed the excess of solvent credits over debts owing.

It thus appears that with respect to state legislation, state courts have held that to tax both the property and the debt is double taxation and not required.

Washington County v. *Murray*, 71 Colo. 522, (p. 36 *supra*);
Skilton v. *Colebrook*, 76 Conn. 666, (p. 37 supra.)
U. S. Trust Co. v. *Comm.*, 245 Mass. 75 (p. 38 *supra*);
McLaughlin v. *Cluff*, 66 Utah 245, (p. 40 *supra*)
State v. *Smith*, 158 Ind. 543, (p. 41 *supra*)
Westmoreland County v. *Fries*, 80 Pa. 51, (p. 43 *supra*).

"The multiplicity of credits does not add to the property wealth . . . . To tax both this right and the property which it represents is clearly double taxation."

State ex rel. Wolfe v. *Parmenter*, 50 Wash. 164, 175, 176.

And see

People v. *Hibernia Bank*, 51 Calif. 243,
Sav. & L. Soc. v. *Multnomah County*, 169 U. S. 421, (p. 39 *supra*.)

INDEX OF CASES CITED

	Page
Abie State Bank v. *Bryan*, 282 U. S. 765, 778	16n
Aero Mayflower Transit Co. v. *Georgia*, 55 S. Ct. Rep. 709, 79 L. ed. Adv. Op. 749	21
American Sugar Refining Co. v. *Louisiana*, 179 U. S. 89	11n
Armour v. *Virginia*, 246 U. S. 1	30
Attorney General v. *Rutland R. R. Co.*, 86 Vt. 328	30
Bandini Pet. Co. v. *Superior Court*, 284 U. S. 8, 22	23
Bank of Miles City v. *Custer County*, 93 Mont. 291, 19 P. (2d) 885	39
Barbier v. *Connolly*, 113 U. S. 27	21
Beers v. *Glynn*, 211 U. S. 477	11n, 33
Bell's Gap R. Co. v. *Pennsylvania*, 134 U. S. 232	6n, 11n, 20, 21
Bellows v. *Weeks*, 41 Vt. 590	31
Bemis Bro. Bag Co. v. *Louisiana Tax Comm.*, 158 La. 1, 103 So. 337	37
Bethlehem Motors Corp. v. *Flynt*, 256 U. S. 421	1n, 13n
Blumenstock v. *Curtis Pub. Co.*, 252 U. S. 436	28
Board of Educ. v. *Ill.*, 203 U. S. 553	22
Bothwell v. *Buckbee*, 275 U. S. 274	28
Broadnax v. *Missouri*, 219 U. S. 285	28, 29
Brown-Forman v. *Kentucky*, 217 U. S. 563	29
Brushaber v. *Union Pacific*, 240 U. S. 1, 23-25	33
Chalker v. *Birmingham, & N. W. Ry. Co.*, 249 U. S. 522	1n, 12
Citizens Tel. Co. v. *Fuller*, 229 U. S. 322, 329	22
Clement Nat'l Bank v. *Vermont*, 231 U. S. 120	6, 6n, 7
Clyde v. *Gilchrist*, 262 U. S. 94	42
Concordia Fire Ins. Co. v. *Illinois*, 292 U. S. 535	6, 7
Darnell v. *Indiana*, 226 U. S. 390	6, 8, 12, 13, 25, 29
Duncan v. *Missouri*, 152 U. S. 377	11n

	Page
Durkee v. *Barre*, 81 Vt. 530	31
Engel v. *O'Malley*, 219 U. S. 128	28
Field v. *Clark*, 143 U. S. 649, 696-697	34
First Nat'l Bank of Shreveport v. *Louisiana Tax Com.*, 289 U. S. 60, 65	29
Fulham's Est., In re, 96 Vt. 308, 316	16n
General Am. Tank Car Corp. v. *Day*, 270 U. S. 367	7
Gibbes v. *Zimmerman*, 290 U. S. 326	16n
Graham v. *Goodcell*, 282 U. S. 409	30
Graniteville Mfg. Co. v. *Query*, 283 U. S. 376	28, 29
Gregg Dyeing Co. v. *Query*, 286 U. S. 472, 482	23
Hall v. *Geiger-Jones Co.*, 242 U. S. 539	28
Hanley v. *Donoghue*, 116 U. S. 1, 7	16n
Hanover Fire Ins. Co. v. *Harding*, 272 U. S. 494	1n,10
Hatch v. *Reardon*, 204 U. S. 152	28
Heisler v. *Thomas Col. Co.*, 260 U. S. 245	29
Hemphill v. *Orloff*, 277 U. S. 537	28, 29
Hooper v. *California*, 155 U. S. 648	28, 29
Hope Natural Gas Co. v. *Hall*, 274 U. S. 284, 288	23
Kidd v. *Alabama*, 188 U. S. 730, 732	6, 8, 12, 13n, 25
Klein v. *Board of Supervisors*, 282 U. S. 19, 23	1n, 6, 9, 12, 25, 26
Lawrence v. *State Tax Com.*, 286 U. S. 276, 284	6, 6n, 8, 12, 25, 30
Louisville Gas & El. Co. v. *Coleman*, 277 U. S. 32	1n, 10
McLaughlin v. *Cluff*, 66 Utah 245, 240 P. 161	40
McPherson v. *Fisher*, 143 Ore. 615, 23 P. (2d), 913	33
Magnano v. *Hamilton*, 292 U. S. 40	6n
Magoun v. *Illinois T. & S. Bank*, 170 U. S. 283	6n
Maxwell v. *Bugbee*, 250 U. S. 525	6n
Merchants &c Bank v. *Pennsylvania*, 167 U. S. 461	6n

	Page
Metropolis Theatre v. *Chicago*, 228 U. S. 61, 69, 70	33
Moore v. *N. Y. Cotton Ex.*, 270 U. S. 593	29
Munday v. *Wisconsin Tr. Co.*, 252 U. S. 499	28
Nashville, C. & St. L. Ry. Co. v. *Wallace*, 288 U. S. 249	29
Nathan v. *Louisiana*, 8 How. 73	28
National Union Fire Ins. Co. v. *Wanberg*, 260 U. S. 71, 75	22,28
New Jersey Tel. Co. v. *Tax Board*, 280 U. S. 338, 346	3n, 27
New York v. *Roberts*, 171 U. S. 658	6n, 22
New York Life Ins. Co. v. *Deer Lodge County*, 231 U. S. 495	28, 29
Northwestern Mut. Life Ins. Co. v. *Wisconsin*, 247 U. S. 132	3n, 6n, 7, 13n, 27
Ohio Oil Co. v. *Conway*, 281 U. S. 146	6n, 11n, 33
Oklahoma v. *Wells Fargo*, 223 U. S. 298, 302	34
Opinion of Justices, 220 Mass. 613	18n, 25
Pacific Am. Fisheries v. *Alaska*, 269 U. S. 269	6n
Pacific Express v. *Seibert*, 142 U. S. 339,352	7, 11n, 21, 22
Paul v. *Virginia*, 8 Wall. 168	28
Peacock v. *Pratt*, (CCA. 9), 121 F. 772	32
Pollock v. *Farmers Loan & Tr. Co.*, 157 U. S. 429, 481	18n, 25
Pollock v. *Farmers Loan & Tr. Co.*, 158 U. S. 601, 675	32n
Prudential Ins. Co. v. *Cheek*, 259 U. S. 530	11n
Pullman v. *Knott*, 235 U. S. 23, 26	23
Railroad Co. v. *Jackson*, 7 Wall. 262	18n, 25
Rafferty v. *Smith*, 257 U. S. 226	31
Rast v. *Van Deman*, 240 U. S. 342, 357	14n, 20, 23, 32, 33
Renaud v. *Abbott*, 116 U. S. 277, 285-286	16n
F. S. Royster Guano Co. v. *Virginia*, 253 U. S. 412	1n, 13
Salomon v. *State Tax Com.*, 278 U. S. 484	33
Sav. Loan Soc. v. *Multnomah Co.*, 169 U. S. 421	39, 41, 44

	Page
Seattle v. *Kelleher*, 195 U. S. 351	31
Skilton v. *Colebrook*, 76 Conn. 666	37, 44
Slaughter-House Cases, 16 Wall. 36	11n
Smith v. *Hard*, 59 Vt., 13	31
Southwestern Oil Co. v. *Texas*, 217 U. S. 114	11n, 21
St. Louis, S. W. Ry. Co. v. *Arkansas*, 235 U. S. 350, 362, 363	23
State v. *Jefferson Finance Co.*, 163 La. 1005, 113 Se. 355	37
State v. *Jones*, 80 Mont. 574, 261 P. 356	39
State v. *Smith*, 158 Ind. 543, 63 N. E. 25, 64 N. E. 18	41, 44
State Board v. *Jackson*, 283 U. S. 527	6n, 11, 14n, 20, 32
Stebbins v. *Riley*, 268 U. S. 137, 143	6, 20, 33
Stephenson v. Binford, 287 U. S. 251	21
Swiss Oil Co. v. *Shanks*, 273 U. S. 407, 413-414	20
Tempel v. *United States*, 248 U. S. 121, 130	16n
Texas v. *Brown*, 258 U. S. 466, 479	23
Travellers' Ins. Co. v. *Connecticut*, 185 U. S. 364	6n, 7
Twining v. *New Jersey*, 211 U. S. 78	11n
United States v. *Heinszen*, 206 U. S. 370	30
U. S. F. & G. Co. v. *Kentucky*, 231 U. S. 394	28
U. S. Glue Co. v. *Oak Creek*, 247 U. S. 321, 328	30
U. S. Trust Co. v. *Comm.*, 245 Mass. 75, 139 N. E. 794	38, 44
Utah Light & Power Co., v. *Pfost*, 286 U. S. 165, 184	30, 34
Wagner v. *Covington*, 251 U. S. 95, 102	23
Washington County v. *Murray*, 71 Colo. 522	36, 44
Watson v. *State Comptroller*, 254 U. S. 122	6, 6n, 7, 21
Western Union Tel. Co. v. *Texas*, 105 U. S. 460, 466	34
Westmoreland County v. *Fries*, 80 Pa. 51	43, 44
Weston v. *Charleston*, 27 U. S. (2 Pet.) 449	18n, 25
Williams v. *Fears*, 179 U. S. 270	28
Wolfe v. *Parmenter*, 50 Wash. 164, 175, 176	43, 44
Wright v. *Georgia R. R.*, 216 U. S. 420	18n, 25

STATUTES AND ADMINISTRATIVE REPORTS AND TEXT BOOK

Page

Vermont Statutes

Compilations

Laws of Vermont 1797
c. LXII, § 2 15

Public Statutes of Vermont (1906) .....
§ 549 15

General Laws of Vermont (1917)
§ 684, Subd. XIII 15

Public Laws of Vermont (1933)
c. 39 24
c. 40 24
c. 41 24
§ 571 25
§ 588 25
§ 873 ..... 5, 24, 31
§ 880 31
§ 888 24
§ 917 30

Session Laws
Acts of 1841, No. 16, Sec. 14 15
Acts of 1882, No. 2, Sec. 12 15
Acts of 1906, No. 510 15
Acts of 1912, Sec. 1 of No. 35 15
Acts of 1915, No. 34, Sec. 1 16
Acts of 1925, No. 21, Sec. 1, Subd. V. 15
Acts of 1931, No. 17, Sec. 3 ..... 5n, 24

Statutes and Constitutions of Other States.

With respect to taxation of credits 19, 20
Colorado Comp. L. (1921) Sec. 7195 .. 19, 36
Connecticut Gen. Stat. (1930), Sec. 1174 ..... 19, 37
Indiana; Burns Ind. St. Ann. (1933), Sec. 64-209 ..... 20, 40

	Page
Louisiana Constitution (1921), Art. X, Sec. 4	19, 37
Maine Rev. Stat. (1930), c. 13, Sec. 6, XIII, p. 259	38
Massachusetts Gen. Laws Ter. Ed. c. 59, Sec. 4	19, 38
Mississippi Code (1930), c. 61, Sec. 3108, (v)	19, 41
Montana Rev. Codes (1921) Sec. 1998	19, 39
New York; 8 Birdseye's Cons. Laws (2 ed) pp. 8581 ff. Tax Law, Secs. 251, 253	19, 42
North Carolina Constitution, Art. V, Sec. 3	20, 42
Oregon Code Ann. (1930), Sec. 69-104	19, 39
Pennsylvania; Purdon's Penn. Stat. Ann., Title 72, Sec. 4731	20, 42
Utah Constitution, Art. XIII, Sec. 3	19, 39
Washington; Remington's Comp. Stat., 1927 Supp., Sec. 11097-5	20, 43
Wisconsin Stat. (1933), c. 70, Sec. 70.11	20, 44
Wyoming Rev. Stat. (1931), Sec. 115-107	19, 40

Administrative Reports

Bureau of Census (Department of Commerce)	
Financial Statistics of State and Local Governments 1932, p. 1821	16n
Statistical Abstract of the United States (1922) pp. 630-631	16n
Commission to Investigate Double Taxation (Vermont) p. 90	16n
Vermont State Tax Commissioner's Report 1914, pp. 309, 310	16, 16n
1932, pp. 92-114	16n

Text Book

Black, Inc. and other Fed. Tax., 4 ed. Sec. 133	32